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## Liability of Digital Business Actors in Marketplace Agreements

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**Abstract:** *The rapid development of marketplaces as digital business actors in electronic transactions has significantly increased technology-based economic activities in Indonesia. However, the dominance of standard form contracts that are unilateral and exclusionary has created an imbalance in bargaining positions between business actors and consumers. This condition opens opportunities for the use of exoneration clauses that may limit or even transfer the liability of business actors. As a result, issues arise in consumer protection, along with a widening gap between legal norms and their implementation in practice, which is becoming increasingly complex. This study focuses on examining how the construction of marketplace liability as digital business actors is formulated in electronic transaction agreements, as well as evaluating the effectiveness of the consumer protection legal regime in Indonesia in regulating such practices comprehensively. The findings indicate that, normatively, the legal framework through the Consumer Protection Law, the Electronic Information and Transactions Law, and their implementing regulations has regulated the prohibition of liability limitations and the obligations of electronic system providers. However, in practice, marketplaces tend to utilize standard clauses to shift risks to sellers and consumers, resulting in a deviation between norms (das sollen) and practice (das sein). Moreover, the factual role of marketplaces, which includes controlling transaction systems, managing funds, and determining dispute resolution mechanisms, demonstrates that marketplaces can no longer be positioned as passive intermediaries. This inconsistency has led to weak consumer protection that remains formalistic and reactive, and has not yet ensured fair and comprehensive compensation for losses. Therefore, it is necessary to reconstruct marketplace liability through regulatory strengthening, limiting exoneration clauses, and establishing independent, effective, and substantively just dispute resolution mechanisms.*

**Keyword:** *Marketplace, Consumer Protection, Electronic Transactions*

### INTRODUCTION

The rapid development of information and communication technology has significantly transformed modern commercial practices, particularly through the emergence of marketplaces as platforms for electronic transactions. Marketplaces no longer function

merely as intermediaries connecting sellers and buyers, but have evolved into digital business entities that control the entire transaction ecosystem, including payment systems, product distribution, and dispute resolution mechanisms (Iskandar, 2018; Makarim, 2015). This transformation places marketplaces in a strategic yet problematic position within the legal relationships among parties involved in electronic transactions.

The legal relationship between consumers and marketplaces is generally established through electronic agreements in the form of standard contracts, where all terms and conditions are unilaterally determined by the platform without any room for negotiation by consumers. The take-it-or-leave-it nature of such agreements creates a significant imbalance in bargaining power between consumers and digital business actors (Sjahdeini, 2019; Nasution, 2014). In practice, these agreements often contain clauses that limit the liability of marketplaces for various transactional risks, such as system failures, delivery delays, non-conformity of goods, and even the transfer of liability to sellers.

This condition potentially disadvantages consumers, as they are only given the option to accept or reject the entire agreement without the ability to negotiate its content. From a consumer protection perspective, this situation reflects a structural imbalance that weakens consumers' ability to assert their rights (Shidarta, 2019; Miru & Yodo, 2017). Furthermore, the use of exoneration clauses in standard contracts often serves as a tool for business actors to limit or evade legal responsibility unilaterally (Fuady, 2016).

Normatively (*das sollen*), Indonesian law has established a comprehensive framework for consumer protection. Law Number 8 of 1999 on Consumer Protection guarantees consumers' rights to comfort, security, and safety, as well as the right to obtain compensation for losses. Article 18 of the law explicitly prohibits the inclusion of standard clauses that transfer or limit the liability of business actors. In addition, Law Number 11 of 2008 on Electronic Information and Transactions, along with its implementing regulations, requires electronic system providers to ensure the reliability, security, and accountability of their systems (Dewi, 2016; Usman, 2016).

However, the empirical reality (*das sein*) demonstrates a gap between legal norms and their implementation in practice. In marketplace transactions, consumers frequently encounter issues such as goods that do not match their descriptions, delays or failures in delivery, unilateral transaction cancellations, and ineffective refund mechanisms. Moreover, dispute resolution processes, which are typically managed internally by marketplaces, raise concerns regarding conflicts of interest and limited access to justice for consumers (Athallah & Gunadi, 2025; Rizky et al., 2025).

In practice, marketplaces tend to position themselves as intermediaries to avoid legal liability, even though they derive direct economic benefits from every transaction facilitated. This discrepancy between their factual role and legal positioning raises fundamental questions regarding the construction of marketplace liability as digital business actors (Zulfah et al., 2026).

Theoretically, the imbalance in bargaining power between consumers and business actors constitutes a primary factor contributing to weak consumer protection in modern transactions (Nasution, 2014). Shidarta also emphasizes that standard contracts are frequently used as instruments by business actors to unilaterally limit their liability (Shidarta, 2019). Nevertheless, most existing studies focus on regulatory compliance or the liability of sellers, and have not comprehensively examined the role of marketplaces as entities that control transaction systems while simultaneously imposing standard contractual terms.

Accordingly, there exists a research gap in the limited analysis of the relationship between marketplace contractual clauses and consumer protection principles within the Indonesian legal framework. This gap highlights the need for further examination of

marketplace liability as digital business actors, particularly in the context of electronic agreements and standard clauses.

Based on the foregoing, this study aims to analyze the implementation of agreements in marketplaces, particularly concerning the liability mechanisms of digital business actors toward consumers, and to evaluate the effectiveness of existing legal instruments in providing consumer protection in electronic transactions. This research is expected to contribute theoretically to the development of consumer protection law in the digital era, as well as practically by providing guidance for marketplace operators in formulating fair and balanced contractual terms and dispute resolution mechanisms.

## **METHOD**

This study employs a normative legal research method, which aims to examine and analyze legal norms governing consumer protection in marketplace agreements. This approach is selected because the focus of the study lies in the analysis of statutory regulations, legal principles, and doctrines related to the liability of digital business actors in electronic transactions (Soekanto & Mamudji, 2009).

In conducting the research, several approaches are utilized. First, the statutory approach is applied by examining relevant laws and regulations, including Law Number 8 of 1999 on Consumer Protection, Law Number 11 of 2008 on Electronic Information and Transactions along with its amendments, and Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. Second, the conceptual approach is used to analyze legal concepts and doctrines found in legal literature, particularly those related to consumer protection, standard contracts, and the liability of digital business actors (Shidarta, 2019; Nasution, 2014). Third, the case approach is employed by analyzing relevant cases involving violations of liability by digital business actors within marketplace practices.

This research is descriptive-analytical in nature, aiming to systematically describe the existing legal framework while analyzing its conformity with practical implementation. The analysis focuses on identifying the gap between normative provisions (*das sollen*) and empirical realities (*das sein*), particularly in relation to electronic agreements and standard clauses in marketplace transactions.

The legal materials used in this study consist of primary, secondary, and tertiary sources. Primary legal materials include binding legal instruments such as the Consumer Protection Law, the Electronic Information and Transactions Law, and their implementing regulations. Relevant court decisions, where available, are also utilized. Secondary legal materials consist of textbooks, national and international journal articles, previous research findings, and expert opinions related to the subject matter (Miru & Yodo, 2017; Fuady, 2016). Tertiary legal materials, such as legal dictionaries, are used to support the understanding of legal terms and concepts.

The collection of legal materials is conducted through library research by identifying, compiling, and reviewing relevant legal sources. The analysis is carried out qualitatively using legal reasoning methods, including legal interpretation to interpret statutory provisions, legal argumentation to assess the conformity between norms and practice, and deductive reasoning to draw conclusions from general legal principles to their application in concrete cases.

## **RESULTS AND DISCUSSION**

### **Research Findings**

This study employs a qualitative approach using in-depth interviews with three key informants who possess professional expertise in the legal field, namely an advocate, a

notary/land deed official (PPAT), and an academic. The selection of informants was conducted purposively, taking into account their professional experience, academic background, and direct relevance to issues of consumer protection and electronic transactions. This approach aims to obtain a comprehensive and in-depth understanding of the legal realities in practice, particularly regarding the effectiveness of legal instruments in e-commerce transactions and the construction of marketplace liability as digital business actors.

Methodologically, the interviews were conducted using a semi-structured format, allowing flexibility in exploring the perspectives of each informant while maintaining alignment with the research objectives. The collected data were analyzed qualitatively using an interpretative approach, by examining the meaning behind the informants' statements and linking them to relevant legal theories and regulatory frameworks.

The findings indicate that although marketplaces have introduced various technical mechanisms to support transaction security—such as escrow systems, rating features, and internal complaint services—these mechanisms have not been able to provide substantive legal protection for consumers. The existing protections tend to be administrative and procedural in nature, largely dependent on the internal policies of each platform. This condition reflects a significant gap between the normative objectives of consumer protection and their practical implementation in digital transactions.

### **Interview Results with Advocate**

Based on the interview with Muhammad Ali Rapsanjani, S.H., an advocate affiliated with PERADI Indonesia, it is understood that marketplaces have attempted to establish transaction security mechanisms through escrow systems. This system is designed as a risk mitigation tool, whereby consumer funds are temporarily held until the buyer confirms that the goods received match the agreed specifications.

Conceptually, the escrow system represents a preventive effort to protect consumers from fraudulent practices. However, the informant emphasized that its effectiveness in practice remains limited. This limitation is primarily due to the heavy reliance on the marketplace's active supervision of sellers and the products being traded. In many cases, marketplaces fail to conduct adequate verification of sellers or product quality, thereby increasing the risk of consumer losses.

Furthermore, the study identifies inconsistencies in the implementation of e-commerce policies. While marketplaces exercise full authority in setting unilateral terms and conditions through standard contracts, this authority is not balanced by sufficient oversight and accountability. This imbalance reflects a disparity between the regulatory power held by marketplaces and their corresponding legal responsibilities.

The informant also highlighted the profit-oriented nature of marketplace business models, which tend to prioritize revenue generation through transaction commissions. As a consequence, consumer protection is often not treated as a primary concern. The absence of standardized product regulations and quality control mechanisms further exacerbates the risk of harm to consumers, particularly in cases involving defective or misrepresented goods.

From a legal perspective, the advocate emphasized that e-commerce transactions must still adhere to fundamental principles of contract law, including good faith, fairness, and balanced obligations between parties. Therefore, marketplaces cannot merely position themselves as passive facilitators, but must be regarded as business actors with legal responsibilities over the transactions they facilitate (Rapsanjani, 2026; Muhammad, 2010; Fuady, 2016).

### **Interview Results with Notary**

The interview with the notary/PPAT reveals fundamental issues in the legal structure of marketplace transactions. E-commerce agreements are predominantly structured as standard contracts drafted unilaterally by the platform provider. Consumers and sellers are not given the opportunity to negotiate the terms, resulting in an inherently imbalanced contractual relationship.

This “take it or leave it” nature of marketplace agreements reflects the dominant position of the platform, which exercises full control over both the content and implementation of the contract. In such circumstances, consumers are not only economically disadvantaged but also legally vulnerable, as they are bound by contractual clauses that they may not fully understand.

The informant also pointed out the absence of an integrated regulatory framework governing e-commerce transactions. Although various laws address consumer protection and electronic transactions, the regulatory landscape remains fragmented and lacks coherence. Consequently, when disputes arise, consumers often face uncertainty regarding the appropriate complaint mechanisms and the competent institutions responsible for resolving such disputes.

From an institutional perspective, the role of notaries in e-commerce transactions is minimal. This is because such agreements are not formalized as authentic deeds, thereby lacking the strong evidentiary value typically associated with notarial instruments. This contrasts with conventional transactions, where notaries play a crucial role in ensuring legal certainty and enforceability.

Moreover, the lack of accessible, efficient, and user-friendly dispute resolution mechanisms significantly weakens consumer protection. Complex procedures and relatively high costs discourage consumers from pursuing legal remedies, resulting in many cases of consumer harm going unaddressed. This situation highlights a structural weakness in the consumer protection system within the digital economy (Rivaldi, 2026; Sjahdeini, 2019; Soekanto, 2019).

### **Interview Results with Academic**

From an academic standpoint, consumer protection in marketplace transactions demonstrates a strong tendency toward formalism. This is evident in the emphasis on fulfilling the formal validity requirements of contracts, without adequately considering substantive justice and the balance of rights and obligations between the parties.

Marketplace agreements generally comply with the formal requirements set forth in civil law, particularly those related to contract validity. However, such formal compliance does not necessarily ensure fair and equitable protection for consumers. In practice, the substance of these agreements often reflects significant imbalances, especially through the use of standard clauses that limit or transfer marketplace liability.

Exoneration clauses represent one of the most critical issues identified in this study. These clauses allow marketplaces to restrict their liability for various transaction-related risks, including system failures, delivery delays, and product discrepancies. Such practices may conflict with fundamental consumer protection principles, particularly those prohibiting unilateral limitation of liability (Shidarta, 2019; Miru & Yodo, 2017; Dewi, 2023).

Empirically, consumers occupy a subordinate position due to limited access to information, low levels of legal literacy, and restricted access to dispute resolution mechanisms. Meanwhile, marketplaces exercise extensive control over transaction processes, including payment systems, data management, and dispute resolution policies.

This discrepancy between the factual role of marketplaces and their legal positioning reveals a significant regulatory gap. Therefore, legal reform is necessary to explicitly

recognize marketplaces as digital business actors with direct legal responsibilities toward consumers (Harliyanto, 2026; Makarim, 2015; Zulfah et al., 2026).

## **Discussion**

### **Marketplace Liability as Digital Business Actors**

From a legal liability perspective, any legal subject that derives economic benefit and exercises control over an activity must bear the legal consequences arising from it (Muhammad, 2010). The findings demonstrate that marketplaces exercise significant control over transactions, including setting contractual terms, managing payment systems, and determining dispute resolution mechanisms.

Such control creates legal obligations based on both fault liability and the duty of care. However, marketplaces frequently limit their liability through standard clauses that shift risks to sellers and consumers. This practice contradicts consumer protection principles that prohibit unfair contractual provisions (Shidarta, 2019; Fuady, 2016).

Therefore, marketplaces should be legally recognized as digital business actors with substantive legal responsibilities toward consumer protection, rather than merely passive intermediaries (Makarim, 2015; Rizky et al., 2025).

### **Effectiveness of Consumer Protection Legal Instruments**

Normatively, Indonesia has established a comprehensive legal framework through the Consumer Protection Law and the Electronic Information and Transactions Law. These regulations define consumer rights, business obligations, and prohibit unfair standard clauses (Dewi, 2016; Usman, 2016).

However, the study finds that the effectiveness of these legal instruments remains limited. Contributing factors include weak regulatory enforcement, fragmented legal frameworks, and low levels of consumer legal literacy (Soekanto, 2019). As a result, consumer protection remains largely formalistic and fails to ensure substantive justice.

Furthermore, mechanisms such as escrow systems cannot be considered sufficient legal protection, as they function primarily as administrative safeguards rather than addressing structural accountability.

### **Complaint and Dispute Resolution Mechanisms**

One of the most critical findings is the absence of an integrated, accessible, and legally certain dispute resolution mechanism for e-commerce transactions. Although marketplaces provide internal complaint mechanisms, these processes lack independence since they are fully controlled by the platform.

This condition creates potential conflicts of interest and weakens consumers' positions. Additionally, decisions made through internal mechanisms lack binding legal force, leaving consumers without effective avenues for appeal. Complex and formalistic procedures further hinder access to justice.

The absence of effective dispute resolution mechanisms may lead to what can be described as structural impunity, where violations against consumers go unaddressed due to weak enforcement and reporting systems. Therefore, it is necessary to establish independent, transparent, and legally binding dispute resolution mechanisms to ensure effective consumer protection in e-commerce transactions.

### **Conclusion of Interview Findings**

Based on the overall findings, it can be concluded that consumer protection in marketplace-based e-commerce transactions remains ineffective, incomplete, and lacking in substantive justice. Although marketplaces have implemented various technical mechanisms

to support transaction security, these mechanisms remain administrative in nature and do not reflect substantive legal accountability.

The advocate's perspective highlights weak supervision and the dominance of profit-oriented practices. The notary emphasizes the imbalance in contractual structures and the absence of clear and integrated complaint mechanisms. Meanwhile, the academic perspective underscores the formalistic nature of existing legal protections, which fail to ensure substantive fairness.

These findings clearly demonstrate a gap between legal norms (*das sollen*) and practical realities (*das sein*), particularly concerning the legal responsibility of marketplaces as digital business actors. Therefore, strategic measures are required, including strengthening regulatory frameworks, enhancing supervision, and establishing independent, transparent, and accessible dispute resolution mechanisms to ensure effective consumer protection.

## CONCLUSION

Based on the results and discussion of this study, it can be concluded that marketplace agreements are predominantly structured as standard contracts unilaterally drafted by platform providers. Legally, such agreements remain binding as long as they fulfill the validity requirements of contract law. However, the take-it-or-leave-it nature of these agreements creates a significant imbalance in bargaining power between consumers and digital business actors, potentially disadvantaging consumers (Sjahdeini, 2019; Nasution, 2014).

The findings indicate that clauses within marketplace agreements frequently limit or transfer the liability of the platform to sellers, particularly in cases involving non-conforming goods, delivery delays, system failures, and refund mechanisms. Such practices may contradict consumer protection principles that prohibit unfair standard clauses (Shidarta, 2019; Fuady, 2016).

From the perspective of electronic transaction law, marketplaces as electronic system providers are obligated to ensure the reliability, security, and accountability of the systems they operate (Usman, 2016; Dewi, 2016). Therefore, marketplaces bear not only technical responsibilities but also legal liability for consumer losses arising from system failures or internal platform policies. The active role of marketplaces in controlling payment systems, managing consumer data, and determining dispute resolution mechanisms demonstrates that they can no longer be categorized as passive intermediaries (Makarim, 2015; Rizky et al., 2025).

Although marketplaces have implemented various protective mechanisms such as escrow systems, rating features, and internal complaint handling, these measures remain largely administrative and do not fully reflect substantive legal accountability. This condition highlights a gap between legal norms (*das sollen*) and their practical implementation (*das sein*), resulting in weak consumer protection in electronic transactions (Athallah & Gunadi, 2025).

Furthermore, while the existing legal framework in Indonesia provides a sufficient normative basis for consumer protection, its effectiveness remains limited. This limitation is influenced by several factors, including weak regulatory supervision, inadequate law enforcement, low levels of legal and digital literacy among consumers, and the absence of an integrated and accessible e-commerce dispute resolution mechanism (Miru & Yodo, 2017; Soekanto, 2019). Consequently, consumer protection tends to remain formalistic and reactive, failing to ensure legal certainty and substantive justice.

In light of these findings, several recommendations can be proposed. Legislators and the government should strengthen regulations that explicitly define marketplace liability as digital business actors, particularly in relation to consumer protection and compensation

mechanisms. Additionally, it is essential to establish an independent, efficient, and accessible e-commerce dispute resolution system.

Marketplace providers are encouraged to reformulate their standard contracts by emphasizing fairness, balance, and good faith. Clauses that unilaterally limit or transfer liability should be revised in accordance with applicable legal provisions. Furthermore, marketplaces should enhance seller supervision, ensure product quality standards, and implement transparent and consumer-oriented refund and compensation mechanisms.

Consumers, on the other hand, are expected to improve their legal and digital literacy in order to better understand their rights and obligations and to actively assert their rights when facing losses. Finally, future research is recommended to adopt empirical or comparative approaches to provide broader insights into marketplace liability practices across different jurisdictions

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